# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

EMILY EUBANK	)
Claimant	)
VS.	)
	) Docket No. 1,042,622
STATE OF KANSAS	)
Respondent	)
	)
AND	)
	)
STATE SELF-INSURANCE FUND	)
Insurance Fund	)

## <u>ORDER</u>

Respondent and its insurance fund appealed the March 16, 2012, Award entered by Administrative Law Judge (ALJ) Brad E. Avery. The Workers Compensation Board heard oral argument on June 20, 2012.

#### **A**PPEARANCES

Jeff K. Cooper of Topeka, Kansas, appeared for claimant. Bryce D. Benedict of Topeka, Kansas, appeared for respondent and its insurance fund (respondent).

#### RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. At oral argument before the Board the parties stipulated that: (1) claimant has a 16% permanent impairment to the left lower extremity, which converts to a 6% permanent impairment to the body as a whole; (2) if the Board finds claimant has a permanent impairment of the low back, the ALJ's finding of a 5% permanent impairment for the low back would not be disputed; (3) if the Board finds claimant has a whole body impairment, claimant's wage loss is 100% and her task loss is 85.29% for a work disability of 92.65%; and (4) the DVD containing a video surveillance recording of claimant was inadvertently not attached to the deposition of Robert Seitter and is made Exhibit A to Mr. Seitter's deposition. Claimant agreed not to pursue a claim for an alleged permanent impairment as a result of her right trochanteric bursitis.

## <u>Issues</u>

In the March 16, 2012, Award, ALJ Avery found claimant sustained a 42% whole body functional impairment (for physical and psychological injuries) and a work disability of 91.67%, which was based upon a 100% wage loss and an 83.35% task loss. ALJ Avery awarded claimant temporary total and permanent partial disability benefits not to exceed \$100,000.00. The ALJ also awarded claimant medical benefits, including appointing Lawrence Family Medicine to provide palliative care in the form of pain medication or medication related to claimant's psychological condition. In his Award, ALJ Avery stated that claimant was entitled to unauthorized medical care up to the applicable statutory limit and additional future medical care upon application and review.

Respondent maintains claimant has only a minor impairment to the left knee, not a back injury. It also asserts claimant has no psychological injury. However, if claimant has psychological problems, they were not a direct result of claimant's physical injury. Claimant's need for future medical treatment is also disputed by respondent. In his brief respondent's counsel stated, "The better evidence in this case is that the claimant has no back injury, no psychological injury, and she is committing a fraud upon the court." Respondent also argues that claimant's alleged left trochanteric bursitis is a scheduled injury.

Claimant contends she sustained a 42% whole body functional impairment (for physical and psychological injuries). Claimant maintains her left trochanteric bursitis is a whole body injury. As indicated above, the parties agreed that if claimant suffered a work disability, she sustained an 85.29% task loss rather than the 83.35% task loss found by the ALJ and a 100% wage loss for a 92.65% work disability. While claimant agrees with the award of future medical and unauthorized medical benefits, claimant requests the Board order respondent to provide ongoing psychological care through Dr. Corkum.

The issues before the Board on this appeal are:

- 1. Did claimant sustain a low back injury that arose out of and in the course of her employment with respondent? Specifically, did claimant's left lower extremity injury cause an antalgic gait, which resulted in a permanent functional impairment to her low back?
- 2. Did claimant's left trochanteric bursitis arise out of and in the course of her employment with respondent? If so, is claimant's left trochanteric bursitis a scheduled or general body injury?
- 3. Did claimant sustain a psychological injury that arose out of and in the course of her employment with respondent and which is directly attributable to her physical injury?

<sup>&</sup>lt;sup>1</sup> Respondent's Brief at 1 (filed Apr. 18, 2012).

- 4. Should respondent be ordered to provide claimant with ongoing psychological care through Dr. Corkum?
  - 5. Is claimant entitled to future medical treatment?

### FINDINGS OF FACT

After reviewing the entire record and considering the parties' arguments, the Board finds:

The parties stipulated claimant suffered a left knee injury by accident on January 7, 2008, that arose out of and in the course of her employment. Claimant had two left knee surgeries and alleges that as a result of an antalgic gait caused by the left knee injury, she developed hip and low back problems. She alleges the hip problems developed sometime before her second knee surgery in June 2009. The back pain became more persistent in November 2010. She has received physical therapy for her hips, but has not been treated for her low back pain.

Claimant testified at the first segment of the regular hearing on September 27, 2011, that she continues to have constant pain in her left knee, left and right hips and lower back. She is only able to stand and walk for short periods of time. Prior to her left knee injury, claimant had none of those physical problems. She alleges difficulty with daily activities of living such as cleaning her apartment and grocery shopping. Claimant uses a cane to ambulate.

Claimant testified she developed emotional problems as a result of her physical injuries. At the regular hearing, claimant testified she began receiving psychotherapy from Dr. Judith Corkum in May 2008, and was still undergoing psychotherapy with Dr. Corkum. In a June 1, 2010, Order the parties agreed that Dr. Corkum would be authorized to treat claimant's psychological problems. At the direction of Dr. Corkum, claimant was prescribed the anti-depressants Wellbutrin, Zoloft and Trazodone by Dr. Rodney Barnes, claimant's family doctor. Claimant testified that prior to the accident, she had no psychological problems.

Claimant last worked for respondent on October 31, 2008. She attempted to work on three occasions in October 2008, but was unable to do so due to pain and swelling. She resigned from her job with respondent in November 2010. The parties stipulated claimant's average weekly wage was \$541.31 until November 21, 2010. When claimant's fringe benefits ended on November 22, 2010, her average weekly wage increased to \$659.06.

At the request of respondent, Tyler Willbanks for Ethos Risk Services (Ethos) conducted surveillance of claimant. Mr. Willbanks testified that he conducted surveillance of claimant on July 10, 13, and 14, 2011, for a total of 24 to 25 hours. He made no video

recordings of claimant on July 10 and 13, and he video recorded claimant a total of 8 seconds on July 14. Mr. Willbanks testified that he and any other investigator working for Ethos was required to make an 8-second recording every hour of the subject's location to prove they were on the job. None of those excerpts were on the DVD that Ethos sent respondent. Mr. Willbanks is a certified surgical technician. Based upon the 8 seconds Mr. Willbanks observed claimant in the video, he testified claimant did not appear to be in any pain or discomfort.

Robert Seitter, also employed by Ethos, conducted surveillance of claimant on August 12, 13 and September 27, 2011. He testified that every hour he is required by Ethos to make a video recording from 5 to 10 seconds long to verify he was conducting the surveillance. Those excerpts were not on the surveillance DVD for the days Mr. Seitter observed claimant. Mr. Seitter testified that on August 12, claimant left her home to go to Walgreens. When claimant left her home, she did not use a cane and did not walk with a limp. He also testified that when claimant arrived at Walgreens, she used the cane to step from the parking lot to the sidewalk. However, he observed no limp and when claimant walked on the sidewalk, she did not use the cane for support. When claimant left Walgreens, Mr. Seitter noticed claimant walked with a different gait. Upon cross-examination, Mr. Seitter indicated he observed claimant a total of 20 hours, 11 minutes. He recorded claimant a total of 2 minutes and 45 seconds.

Reports from Ethos that were introduced at Mr. Willbanks' deposition indicated that an investigator from Ethos also observed claimant on July 16, 2011. However, neither Mr. Willbanks nor Mr. Seitter testified they conducted surveillance of claimant on that day.

Dr. Thomas P. Phillips, an orthopedic surgeon, saw claimant on March 27, 2009, for an independent medical evaluation by order of ALJ Avery. He testified that an MRI taken of claimant's left knee showed a bone contusion and lateral subluxation of the patella. Claimant had undergone a left knee arthroscopy by Dr. Poole on June 23, 2008. When Dr. Phillips first saw claimant, his diagnosis was that claimant had a tracking problem with her left kneecap and he recommended a surgical procedure called a lateral release. Dr. Phillips performed a lateral release on claimant's left knee on June 9, 2009, to correct the lateral subluxation.

Following her surgery by Dr. Phillips on June 9, 2009, claimant received physical therapy. On November 10, 2010, Dr. Phillips indicated claimant had reached maximum medical improvement. He released claimant to return to work without restrictions. Dr. Phillips, pursuant to the *Guides*, opined claimant had a 10% impairment to the left leg.

<sup>&</sup>lt;sup>2</sup> American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

At that time claimant had been using a cane, and Dr. Phillips had no problem with her doing so. Claimant had a mild limp when last treated by Dr. Phillips.

Dr. Phillips was asked about a surveillance video recording of claimant taken by respondent. Dr. Phillips testified the video was somewhat flawed as it was taken from the side. He explained that in order to judge whether a patient has a limp, the patient must be viewed from the front or back while walking. He acknowledged an altered gait can be the basis for an impairment rating. Dr. Phillips testified claimant complained of back problems and received lumbar sympathetic blocks for RSD from Dr. C. Lan Fotopoulos. Dr. Phillips referred claimant to Dr. Dan M. Gurba for trochanteric bursitis. Dr. Phillips opined claimant's back complaints and trochanteric bursitis were indirectly the result of her left knee injury, as they resulted from claimant's altered gait.

At the request of her attorney, claimant was evaluated on February 18, 2011, by Dr. Pedro A. Murati, a physical medicine and rehabilitation physician. His report indicated that claimant's back pain began in November 2009, but in the last few months had caused her a lot of problems. His impression was: (1) status post arthroscopic left knee patellar lateral release and resection of plica synovialis, (2) low back pain secondary to antalgia, (3) status post left knee arthroscopy with chondroplasty of the lateral plateau and the patella, (4) bilateral sacroiliac joint dysfunction (5) left patellofemoral syndrome and (6) left trochanteric bursitis. Dr. Murati opined claimant's back, hip joint and sacroiliac joint problems are the result of her antalgic gait. When questioned how claimant's back, hip joint and sacroiliac joint problems could be caused by her antalgic gait when she had a sedentary lifestyle, Dr. Murati colorfully testified, "Now, if you showed me she learned how to walk on her hands, and she was not walking on her feet, I would say, yeah, she couldn't possibly get this condition."<sup>3</sup>

Dr. Murati opined claimant had combined permanent impairments to the left lower extremity of 16% which converts to a 6% whole body impairment. He placed claimant in Lumbosacral DRE Category II for a 5% whole body impairment. Dr. Murati indicated the foregoing impairments combine for an 11% whole body impairment. He gave claimant the following restrictions: (1) rarely stand, walk, bend, crouch, stoop or climb stairs; (2) no climbing ladders, crawling, squatting, driving a vehicle with a manual transmission, kneeling or using repetitive foot controls with the left leg; (3) pushing, pulling, lifting or carrying no more than 20 pounds occasionally, 10 pounds frequently, and 5 pounds constantly and (4) no lifting below knuckle height. In Dr. Murati's opinion, claimant needed a sit-down job.<sup>4</sup> Although use of a cane was not included in the restrictions, Dr. Murati thought it would be a good idea for claimant to use a cane. Dr. Murati was never asked to review the surveillance video made by Ethos.

<sup>&</sup>lt;sup>3</sup> Murati Depo. at 26.

<sup>&</sup>lt;sup>4</sup> *Id.*, at 14.

On May 13, 2011, Dr. Edward J. Prostic, an orthopedic physician, conducted an independent evaluation of claimant at the request of ALJ Avery. Dr. Prostic opined that pursuant to the *Guides*, claimant had a 20% permanent impairment of the left lower extremity for atrophy, patellofemoral malalignment syndrome and having acquired arthroscopic debridement and plica excision. He also opined claimant had a 4% permanent impairment to the right lower extremity for trochanteric bursitis. Dr. Prostic did not assign claimant a permanent impairment for her back. Dr. Prostic testified that claimant reported injuring the left knee when she struck the left knee on a door while running. She reported having no trochanteric bursitis, left knee or left hip problems prior to her accident.

Dr. Prostic's report indicated he examined and took x-rays of claimant's lumbar spine. No abnormality of the lumbar spine or hips was noted on the x-rays. Dr. Prostic diagnosed claimant with bilateral trochanteric bursitis. He opined claimant's right trochanteric bursitis would be work related because that part of her body bore more weight following the left knee injury. Dr. Prostic testified the extra force placed on the right side would be augmented by an abnormal gait. Dr. Prostic indicated this did not explain claimant's left trochanteric bursitis.

As a result of her knee injury, claimant was restricted by Dr. Prostic to no more than minimal climbing, squatting, kneeling or carrying and no standing for more than 30 minutes per hour. He testified, "should she lose 100 pounds the odds are that these restrictions would be lifted." Dr. Prostic went on to state he would not have imposed the restrictions if claimant was of normal weight. Claimant was not using a cane when she saw Dr. Prostic, nor did he recommend she use one.

Claimant was evaluated at the request of her counsel by clinical psychologist Dr. Robert W. Barnett on March 4, 2010. Dr. Barnett interviewed claimant to assess her intellect, cognitive abilities and symptoms associated with a mental illness. He also had claimant take the Minnesota Multiphasic Personality Inventory-2. Dr. Barnett diagnosed claimant with moderate dysthymic disorder, or long-term depression, which he opined was a direct and natural consequence of her work-related physical injury. He also opined the treatment provided by Dr. Corkum was reasonable and necessary. However, he did not review the treatment records of Dr. Corkum.

On September 16, 2011, Dr. Barnett again interviewed claimant, following the request of her attorney for an impairment rating. Dr. Barnett indicated claimant's psychological condition had deteriorated since he last saw her. He placed claimant in Class III, moderate impairment, of the *Guides*. Dr. Barnett estimated claimant's permanent impairment was 30% to 40%, and was directly traceable to her accident on January 7, 2008. He also opined claimant will need ongoing psychological treatment.

<sup>&</sup>lt;sup>5</sup> Prostic Depo. at 22.

Dr. Barnett was told by claimant that two or three times a week she babysits a relative's children. Typically the children were asleep when she watched them.

Respondent had claimant evaluated on April 12, 2010, by Dr. Patrick Caffrey, a rehabilitation psychologist and neuropsychologist. He also interviewed claimant and had claimant take the following tests: Wechsler Adult Intelligence Scale, 3rd Edition; Beck Depression Inventory; Beck Anxiety Inventory and the Minnesota Multiphasic Personality Inventory-2. His diagnosis was adjustment disorder with depressed mood. In his report Dr. Caffrey opined, "Emily Eubank's adjustment disorder with depressed mood appears to be a direct result of her current physical medical condition." He indicated claimant had depression that preexisted her left knee injury, but the depression was aggravated by the injury. He also recommended claimant continue with her current treatment plan for depression.

Respondent's counsel asked Drs. Barnett and Caffrey if their opinion on causation of claimant's depression would change if she had no physical injury. Both psychologists answered in the affirmative.

Claimant was interviewed by vocational rehabilitation counselor Doug Lindahl. He performed an analysis of the job tasks claimant performed in the 15 years prior to her left knee injury. His report indicates claimant worked on a steady basis since August 1999. From the time claimant began working for respondent in May 2004, she held a second job at two other businesses.

The regular hearing was resumed on November 3, 2011. Claimant acknowledged that prior to her left knee injury, she had sought treatment for psychological issues. While a senior in high school, because of the death of a friend, claimant saw a therapist for a few months. Claimant also sought assistance from a psychologist for six months about some career issues, who helped claimant to decide to go to nursing school. Respondent spent a great deal of time asking claimant about her relationships with members of the opposite sex, claimant's former roommates and friends, and claimant's sibling and mother. Claimant was asked where and with whom she went on trips since her left knee injury. Claimant testified she used a cane to ambulate, but could walk short distances without it. She acknowledged that the lady in the surveillance video recording was her.

The findings of ALJ Avery are set out above.

As indicated above, if the Board finds claimant has a whole body impairment, claimant's wage loss is 100% and her task loss is 85.29%.

<sup>&</sup>lt;sup>6</sup> Caffrey Depo., Ex. 2 at 14.

#### PRINCIPLES OF LAW AND ANALYSIS

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.<sup>7</sup> "Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

Respondent asserts that a surveillance video showed claimant has no antalgic gait and, therefore, has no work-related back or hip injuries. The Board viewed the surveillance video in its entirety and finds it has little probative value. Respondent had claimant under surveillance for approximately 7 days, yet the video surveillance recording is less than 3 minutes. On July 14, 2011, claimant is seen in the video a total of 8 seconds and her entire body is only visible approximately 4 seconds. On August 12, 2011, claimant appears in the video for less than 30 seconds when she left her residence to go to Walgreens. Claimant's head is the only part of her body visible when she comes out of her residence. When she enters Walgreens, her entire torso can be seen less than 10 seconds. When she exits Walgreens, only the upper portion of her body can be seen. The August 12 segment of the video is sometimes out of focus and it was raining. The surveillance video casts a dark cloud upon the credibility of Mr. Seitter and Mr. Willbanks.

In its brief, respondent alleged that because it captured so little video of claimant outside her residence, she must be sedentary in her home and not ambulating. Respondent's attorney made comments such as, "claimant spends most of her time relaxing in her apartment." Respondent's assertions are unsubstantiated and not supported by the evidence.

The testimony of Drs. Murati and Phillips convinces this Board that claimant's low back injury was the result of an antalgic gait which in turn was the result of claimant's work-related left knee injury. Dr. Phillips testified that during his course of treatment, claimant made complaints of back pain. Dr. Murati opined claimant's back, hip joint and sacroiliac joint problems are the result of her antalgic gait. Simply put, it is more probably true than not that claimant sustained a low back injury that arose out of and in the course of her employment with respondent.

Respondent also disputed that as a result of an antalgic gait, claimant sustained left trochanteric bursitis. In the alterative, respondent argues claimant's left trochanteric bursitis is a scheduled injury. Drs. Prostic, Phillips and Murati diagnosed claimant with

<sup>&</sup>lt;sup>7</sup> K.S.A. 2007 Supp. 44-501(a).

<sup>&</sup>lt;sup>8</sup> K.S.A. 2007 Supp. 44-508(g).

<sup>&</sup>lt;sup>9</sup> Respondent's Brief at 2 (filed Apr. 18, 2012).

trochanteric bursitis. Drs. Phillips and Murati attributed claimant's trochanteric bursitis to her altered gait. Dr. Prostic testified that he would expect claimant's left knee injury to cause claimant to have right, but not left, trochanteric bursitis. However, he acknowledged that before claimant's work-related knee injury, she did not have left trochanteric bursitis. Simply put, the greater weight of the medical evidence proves claimant developed left trochanteric bursitis as a result of her altered gait.

The Board has consistently ruled that trochanteric bursitis in a claimant's hip is a general body disability, not a scheduled injury.<sup>10</sup>

Respondent contends claimant has no psychological impairment. As pointed out by the ALJ in the Award, respondent's own expert, Dr. Caffrey, opined claimant's adjustment disorder with depressed mood appears to be a direct result of her current physical medical condition. He extensively tested claimant and interviewed her at length. Dr. Barnett diagnosed claimant with moderate dysthymic disorder, or long-term depression, which he opined was a direct and natural consequence of her work-related physical injury. The only evidence of the nature and extent of claimant's psychological impairment was the testimony of Dr. Barnett that claimant sustained a permanent impairment of 30% to 40%. Therefore, the Board affirms the ALJ's finding that claimant has a 35% permanent impairment for her psychological condition.

Both Drs. Caffrey and Barnett opined claimant is in need of ongoing psychological treatment. The Board concurs with ALJ Avery that Lawrence Family Medicine be appointed to provide palliative care in the form of pain medication or medication related to claimant's psychological condition. Dr. Caffrey, respondent's expert, opined that claimant should continue her treatment with Dr. Corkum. Therefore, the Board will adopt that recommendation. Further, the Board finds claimant has proven her need for future medical treatment.

In respondent's brief, its counsel makes assertions that claimant is committing fraud and implies claimant is faking her back and psychological problems. As stated above, respondent's counsel alleged that after her accident, claimant spends her days at home relaxing. Respondent's attorney stated in his brief that claimant's mother is an enabler and that Dr. Corkum has done nothing to motivate claimant to assume responsibility for resuming a productive life. Further, respondent's counsel stated that before her accident, claimant failed at relationships with men, failed at a relationship with her brother and failed at most things she attempted. These statements are irrelevant, mean-spirited and have little, if any, factual basis. Prior to her accident claimant worked for respondent full time, while often working a second part-time job. That indicates claimant was a hardworking individual, not someone relaxing at home because she does not want to work.

<sup>&</sup>lt;sup>10</sup> Mountford v. Metro Xpress, No. 1,038,117, 2009 WL 5385885 (Kan. WCAB Dec. 21, 2009); Wiswell v. Blair Surveying, Inc., No. 1,019,901, 2006 WL 3891437 (Kan. WCAB Dec. 29, 2006).

At oral argument, respondent's attorney accused claimant of using her claim as a "gravy train." Such unsupported and demeaning comments cause the Board concern. The Board recognizes that an attorney must be a strong advocate for his or her client. That duty is tempered by an attorney's obligations to make only good faith arguments on behalf of a client. Respondent's attorney accused claimant of perpetrating a fraud. None of the medical or psychological experts who testified, including respondent's own psychological expert, questioned claimant's credibility or indicated she was a malingerer. The Board does not find a factual basis for the allegation of fraud. To the contrary, the Board finds claimant to be a credible witness.

Claimant's burden is to prove by a preponderance of the evidence that her position on issues is more probably true than not. In this claim, claimant cleared that obstacle by a wide margin.

### CONCLUSION

- 1. Claimant sustained a low back injury that arose out of and in the course of her employment with respondent. Specifically, claimant's left lower extremity injury caused an antalgic gait, which resulted in a low back injury.
- 2. Claimant's left trochanteric bursitis arose out of and in the course of her employment with respondent and is a general body injury.
- 3. Claimant sustained a psychological injury that arose out of and in the course of her employment with respondent which directly resulted from her physical injury.
- 4. Claimant sustained a 16% functional impairment to the left lower extremity, which converts to a 6% functional impairment to the body as a whole. Claimant has a 5% functional impairment to the body as a whole as a result of her low back injury. The foregoing functional impairments combine for an 11% whole body impairment. Claimant has a 35% functional impairment for her psychological impairment. Claimant's physical and psychological functional impairments combine for a 42% functional impairment. Claimant's wage loss is 100% and her task loss is 85.29%, which calculates to a 92.65% work disability.
- 5. Claimant is entitled to ongoing treatment for her psychological condition with Dr. Corkum.
  - 6. Claimant is entitled to future medical treatment as ordered by ALJ Avery.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>11</sup> Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

### **AWARD**

**WHEREFORE**, the Board modifies the March 16, 2012, Award entered by ALJ Avery by finding that claimant has a work disability of 92.65%. The Board also orders that Dr. Corkum is authorized to provide ongoing treatment for claimant's psychological condition. The Board affirms the remainder of the ALJ's Award.

Emily Eubank is granted compensation from the State of Kansas and its insurance fund for a January 7, 2008, accident and resulting disability. Ms. Eubank is entitled to receive the following disability benefits:

Based upon an average weekly wage of \$541.31, Ms. Eubank is entitled to receive 130.70 weeks of temporary total disability benefits at \$360.89 per week, or \$47,168.32.

Based upon an average weekly wage of \$541.31, for the period ending November 21, 2010, Ms. Eubank is entitled to receive 19.14 weeks of permanent partial general disability benefits at \$360.89 per week, or \$6,907.43, for a 42% permanent partial general disability.

Based upon an average weekly wage of \$659.06, for the period commencing November 22, 2010, Ms. Eubank is entitled to receive 104.52 weeks of permanent partial general disability benefits at \$439.40 per week, or \$45,924.25, for a 92.65% permanent partial general disability. The total award is not to exceed \$100,000.00.

As of September 10, 2012, Ms. Eubank is entitled to receive 130.70 weeks of temporary total disability compensation at \$360.89 per week in the sum of \$47,168.32, plus 19.14 weeks of permanent partial general disability compensation at \$360.89 per week in the sum of \$6,907.43, plus 94.14 weeks of permanent partial general disability compensation at \$439.40 per week in the sum of \$41,365.12, for a total due and owing of \$95,440.87, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance of \$4,559.13 shall be paid at \$439.40 per week until paid or until further order of the Director.

#### IT IS SO ORDERED.

<sup>&</sup>lt;sup>11</sup> K.S.A. 2011 Supp. 44-555c(k).

Dated this	_ day of September, 2012.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

c: Jeff K. Cooper, Attorney for Claimant jeff@jkcooperlaw.com

Bryce D. Benedict, Attorney for Respondent and its Insurance Fund bbenedict@kdheks.gov; khenderson@kdheks.gov

Brad E. Avery, Administrative Law Judge